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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7591 of 2007

St. Joseph Convent ...Petitioner

V/s.

Shri Lokbahadur T. Dhaat ...Respondent

Mrs. Meena H.Doshi for the Petitioner
Mr.A.D.Shetty with Ms. R.K.Joshi, Advocate for
Respondent

CORAL : B.H.MARLAPALLE,J.
DATED : 7th December, 2007

P.C.

. Heard Mrs.Doshi, the Learned Counsel for the Petitioner, Mr. Shetty, the Learned Counsel for the Respondent workman.

2. The Respondent had raised a demand of reinstatement in service and the same came to be referred for adjudication to the Labour Court at Mumbai in Ref(IDA)No. 273/2006. After the workman filed his Statement of Claim on or about 25-9-2006, the Petitioner (first party in the reference) filed an application at Exhibit C-2 and by titling it as a preliminary written statement and raised 2 preliminary issues in the said

reference. At the first instance it was claimed that the Petitioner could not be termed as an "industry" and secondly, the workman could not be termed as "workman" under the Industrial Disputes Act, 1947. By the impugned order dated 8-8-2007 this application has been rejected.

3. Mrs. Doshi has placed reliance on the decision in the case of **Director, Food & Supplies, Punjab & anr. V/s. Gurmit Singh reported in (2007) 5 Supreme Court Cases page 727 and the decision of this Court (Division Bench) in the case of Jaslok Hospital and Research Centre V/s. B.V.Chavan & ors. reported in 1987 (54)FLR page 46.**

4. Mr.Shetty on the other hand has referred to the following decisions and submitted that the issues decided by the interlocutory order can be allowed to be challenged when the final award is passed by the Labour Court in the pending reference and at this stage such a challenge is not allowed to be entertained;

(i) The Cooper Engineering Ltd. V/s. P.P.Mundhe reported in AIR 1975 Supreme Court 1900.

(ii) D.P.Maheshwari V/s. Delhi Administration &

ors. reported in (1983) 4 SCC 293.

(iii) Workmen employed by Hindustan Lever Ltd. v/s. Hindustan Lever Ltd. reported in (1984) 4 SCC 392.

(iv) National Council for Cement & Building Materials V/s. State of Haryana & ors. (1996) 3 SCC 206.

5. It is well settled that the employer has the right to raise preliminary issues in a reference made for adjudication of the demands pertaining to industrial disputes as defined under the Industrial Disputes Act, 1947. However, such issues are allowed to be raised normally on the basis of written statement filed by the first party and it is equally well settled that the decision on such issues regarding the status as being a workman or the employer falling within the ambit of the term 'industry' within the meaning of the Industrial Disputes Act, 1947 is a mixed question of facts and law and,therefore, they are required to be decided along with all other issues based on the evidence (oral as well as documentary), the parties may adduce before the Labour Court or the Industrial Tribunal. In the instant

case admittedly the application at Exh.C-2 was filed raising the preliminary issues without filing a written statement to the Statement of claim and it was contended that the reference itself was not maintainable. The Learned Judge of the Labour Court by the impugned order has held that the reference is maintainable and rejected the application. Mrs. Doshi is right in pointing out that the Learned Judge of the Labour Court had also recorded findings that the second party is a 'workman' and first party is an 'industry' as defined under the Industrial Disputes Act, 1947. This approach of the Labour Court is unsustainable and Mr. Shetty fairly conceded that these preliminary issues are required to be decided while deciding the main reference and alongwith other issues on the basis of the evidence that the parties may adduce.

6. Hence, the following order:-

(a) The impugned order is quashed and set aside and the application at Exh.C-2 is restored only to the extent to decide the preliminary points regarding "workman" and "industry".

(b) The said preliminary issues that the first party is not an industry and the second party workman is not a workman within the meaning of the I.D. Act shall be decided alongwith all other issues and on the basis of the evidence the parties may adduce before the Labour Court.

(c) The Petitioner shall file its written statement within a period of four weeks from today in the pending reference and the Labour Court shall frame issues for trial/decision including the preliminary issues within 8 weeks from the filing of the written-statement by the present petitioner.

(d) Trial of the reference is expedited.

[B.H.MARLAPALLE,J.]